

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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MCKESSON INFORMATION
SOLUTIONS, INC.

NO. CIV. S-02-2669 FCD KJM

Plaintiff,

V.

MEMORANDUM AND ORDER

BRIDGE MEDICAL, INC.

Defendant.

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On November 9, 2004 and April 15, 2005, Magistrate Judge Mueller filed Findings and Recommendations ("F&R") and Supplemental Findings and Recommendations ("Supp. F&R"), respectively, regarding construction of United States Patent No. 4,857,716 (the "'716 Patent") covering a Patient Identification and Verification System and Method. Magistrate Judge Mueller recommends that the eighteen disputed claim elements be construed as described in "Amended Exhibit A" to the Supp. F&R.¹

¹ Said Amended Exhibit A is attached hereto.

1 Both parties filed objections to the F&R² and Supp. F&R.³
2 When either party timely objects to any portion of a magistrate
3 judge's ruling on a non-dispositive pretrial matter,⁴ the
4 district court may set aside any portion of the ruling found to
5 be "clearly erroneous or contrary to law." 28 U.S.C.
6 § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

7 Given the complexity of the patent claim at issue and
8 Magistrate Judge Mueller's careful and thorough review of the
9 parties' proposed constructions, both by way of written
10 submissions and lengthy hearing, the court cannot find that
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12 ² After consideration of the parties' objections to the
13 F&R and the oral argument of counsel made at the February 11,
14 2005 hearing, the court was prepared to adopt the F&R with the
15 exception of the construction of three claim elements. (Mem. &
16 Order, filed Feb. 22, 2005.) As to those elements, the court
17 referred the matter back to Magistrate Judge Mueller for further
18 review of the "base station means," "means for only allowing
19 communication," and "means for programming" elements. The
parties submitted additional briefing on the subject terms.
After consideration of that briefing, and without further
hearing, Magistrate Judge Mueller filed the Supp. F&R, rendering
her final decision on these elements. (Supp. F&R, filed April
15, 2005.) The Supp. F&R superceded those portions of the
original F&R, filed November 9, 2004, with regard to the three
claim elements.

20 ³ Said objections and replies thereto were filed on April
21 29 and May 13, 2005, respectively.

22 ⁴ The court is unaware of any circuit court authority
23 determining whether claim construction is a dispositive or non-
dispositive matter under Fed. R. Civ. P. 72. Absent that
24 authority, the court finds persuasive and has followed herein Tom
Hayden Enterprises, Inc. v. Southern Oregon Hot Bikes, Inc., 2004
25 WL 1686937 (D. Or. July 27, 2004) which found that claim
26 construction is a non-dispositive pretrial matter. However, the
court acknowledges that there is contrary district court
27 authority finding claim construction a dispositive pretrial
matter. See e.g., ADE Corp. V. KLA-Tencor Corp., 288 F. Supp. 2d
28 590 (D. Del. 2003). Accordingly, the court notes that even were
it to apply a *de novo* standard of review, its decision would
remain the same--it would adopt in full Magistrate Judge
Mueller's recommended decision. Fed. R. Civ. P. 72(b).

1 Magistrate Judge Mueller's construction of the '716 Patent is
2 clearly erroneous or contrary to law. The F&R and Supp. F&R are
3 supported by the record and by proper analysis. In particular,
4 with respect to the three claim elements addressed in the Supp.
5 F&R, the court emphasizes the following:

6 First, as to the "base station means" construction,
7 Magistrate Judge Mueller supports her conclusion with reference
8 to several federal circuit court opinions (see e.g. Summit
9 Technology Inc. v. Nidek Co., Ltd., 363 F.3d 1219, 1224 (Fed.
10 Cir. 2004); Caterpillar, Inc. v. Deere & Co., Inc., 224 F.3d
11 1374, 1379 (Fed. Cir. 2000)) and persuasively distinguishes the
12 case of Micro Chem., Inc. v. Great Plains Chem. Co., 194 F.3d
13 1250 (Fed. Cir. 1999), heavily relied upon by plaintiff.
14 Moreover, her decision to construe this element under § 112, ¶ 6
15 is well supported because the claim language, clearly, does not
16 reveal sufficient structure to perform all the recited functions
17 of the base station. Finally, Magistrate Judge Mueller properly
18 identifies the corresponding structure of the base station means
19 as each structure is described with its respective function so as
20 to fully demonstrate how the relevant structure *actually performs*
21 the recited functions of the base station. (Supp. F&R at 6:9-
22 7:5.)

23 Second, with respect to the "means for only allowing
24 communication" claim element, Magistrate Judge Mueller properly
25 identified the corresponding structure as a "microprocessor with
26 the capability of processing messages that do contain an
27 identifier that corresponds to the base station's identifier and
28 not processing messages that do not contain an identifier that

1 corresponds to the base station's identifier." (Supp. F&R at
2 10:9-12.) The "means for only allowing communication" claim
3 element relates to the base station's capacity to detect incoming
4 messages transmitted by the portable terminals and to respond
5 only to those messages containing the base station's unique
6 identifier. ('716 Patent, Col. 24:15-17.) Magistrate Judge
7 Mueller describes that for the base station to perform this
8 function, to "ignore" transmissions from some portable terminals
9 and "only communicate" with portable terminals having the same
10 address, it requires some structure that actually performs this
11 function. She correctly derives that structure from the drawings
12 included in the specification section of the patent (Figs. 5, 8
13 and 32), each of which shows the base station as including a
14 "microprocessor." Braun Med. Inc. v. Abbott Labs, 124 F.3d 1419,
15 1424 (Fed. Cir. 1997). Thus, a microprocessor with the above-
16 described specialized capabilities is the corresponding structure
17 of the recited function of "only allowing communication."

18 Third, as to the "means for programming" claim element,
19 again Magistrate Judge Mueller's identification of the
20 corresponding structure is well supported with reference to the
21 claim language. She properly finds that the patent *requires*
22 interconnection for transfer of the unique identifier; in other
23 words, a wireless embodiment is not contemplated by the patent.
24 "In each [of the] embodiment[s] [preferred and alternative], the
25 patent describes the structural features required to perform the
26 recited function, *including a point of insertion or mounting of*
27 *the handheld device in the base station to facilitate an*
28 *interconnection, which the invention teaches is necessary for*

1 downloading or transferring the base station's unique identifier
2 into the memory of the portable handheld terminal." (Emphasis
3 added.) (Supp. F&R at 12:2-6; see also Supp. F&R at 12 n. 10.)
4 Further, she correctly found that the RF modem and antenna do not
5 perform the function of "programming." Rather, the claim
6 language consistently and exclusively associates the RF modem and
7 antenna with the *communication* function performed by the base
8 station means. (Supp. F&R at 12:16-13:10.)

9 Accordingly, the court hereby ADOPTS in full the F&R, filed
10 November 9, 2004, as amended by the Supp. F&R, filed April 15,
11 2005. The eighteen disputed claim elements are construed as set
12 forth in the attached exhibit.

13 IT IS SO ORDERED.

14 DATED: June 7, 2005.

15 /s/ Frank C. Damrell Jr.
16 FRANK C. DAMRELL, Jr.
17 UNITED STATES DISTRICT JUDGE
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